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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,762	10/31/2001	Rainer Treptow	DT-6016	4302
30377	7590	02/24/2006	EXAMINER	
DAVID TOREN, ESQ. ABELMAN FRAYNE & SCHWAB 666 THIRD AVENUE NEW YORK, NY 10017-5621			HANDY, DWAYNE K	
			ART UNIT	PAPER NUMBER
			1743	

DATE MAILED: 02/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

2. Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tagge et al. (6,602,714) in view of Eggers et al. (5,532,128). Tagge shows an array for the high throughput synthesis and screening of compounds. The array contains a number of memory locations (wells) with conductive material for heating the material in the wells. The material is shown as both a film or metal layer (Figure 3, element 12), channels that are metallized for resistive heating (Figure 10, col. 18, lines 35-45) and individual elements in Figure 11 on the bottom heater/sensor array. The bottom stage of the stackable device of Figure 11 also shows temperature sensors (also disclosed in column 18, lines 47-58). Tagge discloses materials of construction for the device in

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column 8, lines 45-59 and includes plastic in the form of a microtiter plate. In column 23, line 58 through column 24, line 38, Tagge teaches the application of an alternating electrostatic potential that is measured by a variety of means including capacitive proximity sensors (col. 24, l. 20). Tagge does **not** teach the conductive material being on the wall of plates. Eggers et al. teach a multisite detection apparatus for identifying molecular structures. The device is best shown in Figures 2A and 2B and includes electrode plates on both the walls and bottom of the wells. The electrodes allow for the electronic interrogation of the sites for the purpose of analyzing the contents of the wells. It would have been obvious to one of ordinary skill in the art to combine the teachings of Eggers with the device and methods of Tagge. One would place the electrode material on all well surfaces to insure that material in the wells contact the electrodes.

Response to Arguments

3. Applicant has cancelled claims 51, 52, 55, 56 and 58-63 to overcome the rejections under USC 112 first and second paragraphs. Applicant has also amended claim 67. This claim remains rejected – but now under USC 103. The amendment of claim 67 is enough to overcome the previous 112 rejection since the claim now recites a microtitration plate instead of a pipette tip. The embodiment of the device now recited in claim 67 is similar to original claims 53 and 54. The Examiner believes that the original rejection under Tagge and Eggers is now applicable again since applicant has

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substituted a microtitration plate for the pipette tip. This rejection is repeated above in Paragraph 2.

Allowable Subject Matter

4. Claims 64, 65 and 68-76 are allowed. Claims 64 and 65 were previously deemed allowable. Claim 68 recites an apparatus for tempering a specimen comprised of a microtitration plate made of at least partially conductive material, a device for applying a current, and a capacitance measuring circuit adapted to be connected to the microtitration plate via needle bed adapted. The Examiner did not find prior art which recited or suggested those features.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dwayne K. Handy whose telephone number is (571)-272-1259. The examiner can normally be reached on M-F 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on (571)-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DKH
February 21, 2006


Jill Warden
Supervisory Patent Examiner
Technology Center 1700